

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re: : Chapter 13
Laura E. Howard : Case No. 17-50982
: Judge PRESTON
:
Debtor :
:

**MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS WHOLLY
UNSECURED AND VOID**

Now comes Debtor, by and through undersigned counsel, and respectfully moves the Court, pursuant to 11 U.S.C. §§506, 1322(b)(12), 1325(a) and 1327(c), and Federal Rules of Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/lien of State of Ohio – Department of Taxation (the “Creditor”) is wholly unsecured and void.

Support for the Motion is set forth below.

MEMORANDUM IN SUPPORT

1. The Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code on February 23, 2017 (the “Petition Date”).
2. As of the Petition Date, the Debtors were the owner of the following real property located at 1781 E. Hudson Street Columbus, OH 43211 (the “Property”). The Debtor own the Property individually. A legal description of the Property is attached hereto as Exhibit A.
3. The value of the Property as of the Petition Date, as set forth in the appraisal filed with the Court as Doc #12, was \$35,000.00.
4. As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts specified and in the relative priority set forth below:
 - a. First mortgage/lien: Specialized Loan Servi in the amount of \$59,249.00. The first mortgage/lien was obtained by the mortgagee/lienholder on March 23, 2007. The first mortgage/lien was filed of record on April 17, 2007, in the

Office of the Recorder, Franklin County, Ohio, as Instrument Number
200704170067319.

5. The Creditor's mortgage/liens sought to be avoided total \$20,444.56.
 - The mortgage/liens were obtained by the Creditor and filed of record in the Franklin County Court of Common Pleas with the following Lien Nos.
 - o 15 JG 029508 for \$5,124.02
 - o 15 JG 005739 for \$2608.15
 - o 15 JG 005725 for \$2181.00
 - o 14 JG 008016 for \$305.90
 - o 12 JG 001086 for \$511.52
 - o 12 JG 008515 for \$944.41
 - o 11 JG 034308 for \$637.08
 - o 06 JG 006673 for \$200.04
 - o 04 JG 001818 for \$3,348.99
 - o 03 JG 007249 for \$1393.20
 - o 03 JG 006947 for \$1666.10
 - o 02 JG 008047 for \$187.76
 - o 00 JG 014801 for \$303.16
 - o 00 JG 020690 for \$567.61
 - o 00 JG 003536 for \$373.11
 - o 95 JG 002486 for \$91.74
6. Value of the property: \$35,000.00
- Total amount of all mortgages/liens Superior to the Creditor's mortgage/lien: \$59,249.00
7. The amount of the mortgage(s)/lien(s) senior to the mortgage/lien to be avoided exceeds the value of the Property. As a result, there is no equity to which the

Creditor's mortgage/lien may attach, and the Creditor's mortgage/lien is wholly unsecured and void under the combined effect of 11 U.S.C. §§506(a), 1322(b)(12), 1325(a) and 1327(c) and the terms of the Debtors' confirmed plan. *See Lane v. Western Interstate Bancorp. (In re Lane), 280 F.3d 663 (6th Cir. 2002).*

8. Unless otherwise ordered, the claim of the Creditor, if filed, shall be allowed and paid only as an unsecured nonpriority claim and shall be treated under the Debtors' Chapter 13 plan in the same manner as all other unsecured nonpriority claims.
9. Upon plan completion and discharge, the mortgage/lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the mortgage/lien, the Debtors may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the Creditor's mortgage/lien.

WHEREFORE, the Debtor requests that the court grant the Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Respectfully submitted,

/s/ Courtney A. Cousino
Courtney A. Cousino, Esq (0082136)
Attorney for Debtors
23 E. Kossuth Street
Columbus, OH 43206
(614) 228-4435
(614) 228-3882 fax
courtney@fesenmyerlaw.com

NOTICE OF MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS WHOLLY UNSECURED AND VOID

Notice is hereby given that Debtor(s) has filed the following papers with the Court: Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought, or if you want the Court to consider your views thereon, then on or before twenty-one (21) days from the date of service of this Notice, you or your attorney must:

File with the Court a written request for a hearing along with a written response or an answer explaining your position. This pleading must be filed at Clerk of Courts, United States Bankruptcy Court, 170 N. High Street, Columbus, Ohio 43215. If you mail your request and response to the Court for filing, you must mail it early enough so the Court will receive it on or before the date stated above. The Court will send out a Notice of hearing. You must also mail a copy to:

Courtney A. Cousino, Esq
Fesenmyer Cousino Weinzimmer
23 E. Kossuth Street
Columbus, Ohio 43206

Office of the U.S. Trustee
170 N. High Street, #200
Columbus, Ohio 43215

Frank M. Pees - Chapter 13 Trustee
130 E Wilson Bridge Road, Suite 200
Worthington, OH 43085

Laura E. Howard
1781 E. Hudson Street
Columbus, OH 43211

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief pursuant to the provisions of Local Bankruptcy Rule 9013.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served to all ECF participants registered in this case electronically on the date of filing through the court's ECF System at the email address registered with the court or by regular U.S. mail this 8th day of March 2017 to the following:

Debtors:

Laura E. Howard
1781 E. Hudson Street
Columbus, OH 43211

Creditors:

State of Ohio, Department of Taxation
P.O. Box 182401
Columbus OH 43218

State of Ohio, Department of Taxation
Attn: Rebecca Daum
30 E. Broad Street, 21st Floor
Columbus OH 43216

Attorney General of the State of Ohio
Collection Enforcement
150 E. Gay St., 21st floor
Columbus, OH 43215

State of Ohio, Department of Taxation
Bankruptcy Department
P.O. Box 530
Columbus, OH 43216

Ohio State Attorney General
30 E. Broad Street, 17th Floor
Columbus OH 43215

/s/ Courtney A. Cousino
Courtney A. Cousino (0082136)
Attorney for Debtor



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Pgs: 4 \$44.00 T20050089983
11/10/2005 2:53PM MLANTHONY J C
Robert G. Montgomery
Franklin County Recorder

**GENERAL WARRANTY DEED
With Release of Dower**

KNOW ALL MEN BY THESE PRESENTS THAT, Grantors, Roy David Alexander, married and Barbara J. Williams, widow, of Corsicana and Amarillo, Texas in consideration of the sum of One dollar (\$1.00) and other good and valuable consideration to them paid by, Grantees, James L. Howard and Laura E. Howard, married, whose address is 1781 E. Hudson Street, Columbus, Ohio, 43211 the receipt whereof is hereby acknowledged, do hereby **grant, bargain, sell and convey** to the said Grantees their heirs and assigns forever, the following described real estate:

Situated in the State of Ohio, County of Franklin and City of Columbus and being further described as follows:

Being a part of Lot "D" set off to Windsor Atcheson, Jr. in the division of lands of his father, Windsor Atcheson, Sr., deceased, as shown of record in Complete Record Volume 84, page 145, of the Court of Common Pleas, Franklin County, Ohio, also, more specifically a part of the 0.872 acre tract conveyed to Hristo Bobich by deed of record in Deed Book 1225, page 328, Recorder's Office, Franklin County, Ohio, said part being more particularly described as follows:

Beginning at the northwest corner of said 0.872 acre tract, said beginning point being in the centerline of Hudson Street, (Mock Road); thence South 6 degrees 20' West along the west line of said 0.872 acre tract 386.00' to the southwest corner of said 0.872 acre tract; thence south 88 degrees 31' East along the south line of said tract 56.30' to a point; thence north 4 degrees 17' 30" east across said 0.872 acre tract 384.15' to a point in the north line of said tract and in the centerline of Hudson Street; thence north 87 degrees 15' West along the centerline of Hudson Street 42.50' to the place of beginning, containing 0.436 acres of land; subject, however, to all legal rights of way.

** EXCEPTING THERE FROM EXHIBIT "A". SEE ATTACHED.*

Subject to any and all conditions and restrictions appearing of record or contained in former deeds.

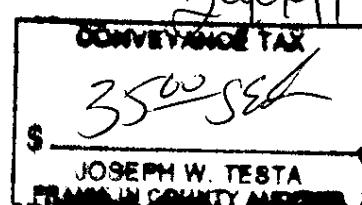
* 199907070171743

Last transfer Deed Book volume * 3641, page E 14, Recorder's Office, Franklin County, Ohio.

PARCEL NO. 010 - 099104 - 00

ALL THE ESTATE, TITLE AND INTEREST of the said Grantors either in law or equity, of, in and to the said premises; Together with all the privileges and appurtenances to the same belonging, and all the rents, issues and profits thereof; To have and to hold the same to the only proper use of the said premises thereunto belonging, to the said Grantees, James L. Howard and Laura E. Howard, married, their heirs and assigns forever,

AND THE SAID GRANTORS, Roy David Alexander, married and Barbara J. Williams, widow, for themselves and their heirs, executors and administrators, do hereby covenant with the said Grantees, James L. Howard and Laura E. Howard, married, their



TRANSFERRED
NOV 10 2005
JOSEPH W. TESTA
AUDITOR
FRANKLIN COUNTY, OHIO

heirs and assigns, that they are the true and lawful owners of the said premises, and have full power to convey the same; and that the title so conveyed is **CLEAR, FREE AND UNINCUMBERED; AND FURTHER**, that they do **WARRANT AND WILL DEFEND** the same against all claims of all persons whomsoever.

IN WITNESS WHEREOF, the said Grantors, Roy David Alexander, married and Barbara J. Williams, widow who hereby release all their right and expectancy of **Dower** in said premises, have hereunto set their hand this 19th day of August, 2005.

Signed and acknowledged in presence of:

Lisa Dickinson

Roy D. Alexander

Sharon Bush

Erma Alexander

Cathy L. Jones

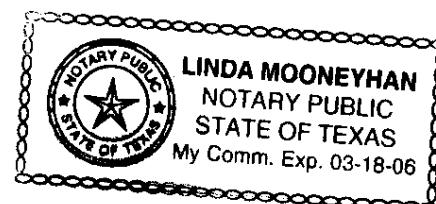
Barbara J. Williams

State of Texas, County of Navarro ss.

Be it remembered, that on this 19th day of August, 2005 before me, the subscriber, a notary public in and for said state, personally came the above named individuals Roy Alexander, Erma Alexander
Lisa Dickinson, Sharon Bush, the Grantors in the foregoing deed, and acknowledged the signing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Linda Mooneyhan
Notary Public



State of Texas, County of Potter ss.

Be it remembered, that on this 29th day of August, 2005 before me, the subscriber, a notary public in and for said state, personally came the above named individual(s) Barbara A Williams, the Grantors in the foregoing deed, and acknowledged the signing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Jonice E. Thomason
Notary Public



Situated in the State of Ohio, County of Franklin, City of Columbus, being in Quarter Township 4, Town 1 North, Range 18 West, United States Military Lands and being part of a 0.436 Acre tract conveyed to Roy D. Alexander and Barbara J. Williams by official record 1063-E07 of the Recorder's Office, Franklin County, Ohio and being more particularly described as follows:

Being a parcel of land lying on the right side of the centerline of a survey, made for the City of Columbus and being located within the following described points in the boundary thereof:

Commencing at a Railroad Spike found at the intersection of Hudson Street and Joyce Avenue, being centerline of survey Station 10+00.00;

thence North 86°46'25" West, 219.40 feet along the centerline of Hudson Street to a point in the Grantor's northerly property line, being centerline of survey Station 7+80.60, also being the place of beginning,

thence South 04°44'30" West, 35.01 feet along the Grantor's easterly property line, and the westerly property line of a 0.436 acre tract conveyed to Cary Bolden by deed of record in O.R. 2351-F18 to a point in the proposed southerly right-of-way line for Hudson Street, passing an iron pin found in the existing southerly right-of-way line for Hudson Street at 29.97 feet, said point being 35.00 feet right of centerline of survey Station 7+79.67;

0-16-0
0.038 AC.
SPLIT FROM
010-99104

thence North 86°46'25" West, 47.12 feet along the proposed southerly right-of-way line for Hudson Street to a point in the Grantor's westerly property line and the easterly property line of Reserve A in the Norlea Park Subdivision as recorded in P.B 19, Pg. 23, said point being 35.00 feet right of centerline of survey Station 7+32.55;

thence North 6°15'19" East, 35.05 feet along the Grantor's westerly property line, the easterly line of said Reserve A, to a point in the Grantor's northerly property line, being centerline of survey Station 7+34.41;

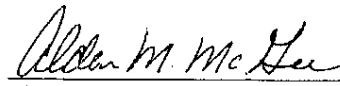
thence South 86°46'25" East, 46.19 feet along the Grantor's northerly property line and the centerline of survey for Hudson Street to the place of beginning.

Containing 0.038 acres, more or less, of which the present road occupies 0.000 acres, more or less. Take is from Auditor's Parcel No. 010-099104.

DESCRIPTION VERIFIED	
DEAN C. RINGLE, P.E., P.S.	
BY:	DD
DATE: 11-10-05	
	

Basis of bearing: The bearing of South 86°46'00" East for the centerline of Hudson Street East of Joyce Avenue, is assumed from an actual field survey, based on Franklin County Auditor's Coordinate System.

STICKLEN-BELSHEIM, a division of Moody/Nolan Ltd., Inc.


Alden M. McGee, Professional Surveyor No. 5679

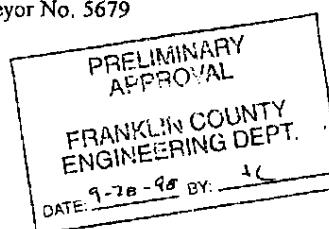
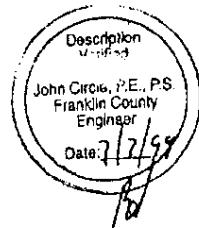


EXHIBIT "A" 